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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/710,895	08/11/2004	Boris A. Movchan	13DV-13975-4	4894
30/952 7590 11/24/2008 HARTMAN AND HARTMAN, P.C. 552 EAST 700 NORTH VALPARAISO, IN 46383				
EXAMINER SMITH, FRANCIS P				
ART UNIT		PAPER NUMBER		
1792				
NOTIFICATION DATE		DELIVERY MODE		
11/24/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

gayle@hartmaniplaw.com
domenica@hartmaniplaw.com

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/710,895

Applicant(s)

MOVCHAN ET AL.

Examiner

Francis P. Smith

Art Unit

1792

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 November 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: Amendment to claim 11 if entered changes the scope of the independent claim, which would require at least additional considerations and particularly resolving potential issues under 35 USC 112/1 paragraph. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-15 and 17-25.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Michael Kornakov/
Supervisory Patent Examiner, Art Unit 1792

/Francis Smith/
Examiner

Continuation of 11. does NOT place the application in condition for allowance because: Applicants argue the 102 rejection over Rigney et al. claiming that Rigney is only limited to "depositing carbides (and/or nitrides)" and "Rigney does not disclose any conditions for evaporating an ingot that contains carbon, a carbon-containing compound, or a carbide or nitride". The examiner respectfully disagrees. The currently pending claim 11 requires "forming the thermal barrier coating at an elevated temperature by co-evaporating carbon and a thermal-insulating material..." Rigney specifically teaches high-temperature evaporation of a TBC material, whereby the TBC ingot contains carbon (col. 5, lines 45-58). Thus, since the steps are the same, the results must inherently be the same, unless they are due to the conditions not recited in the claims. Consult *In re Sussman*, 141 F. 2d 267, 60 USPQ 538 (CCPA 1944). In reference to the Alperine 102 rejection, applicants argue that Alperine does not teach that elemental carbon was present in the coatings, or that carbon-containing gases evolved during aging. However, Alperine teaches forming a thermal barrier coating at an elevated temperature by co-evaporating carbon and a thermal-insulating material (col. 3, line 65-col. 4, line 21; see reaction at col. 4, line 15). As per sintering the thermal barrier coating, Alperine teaches a sintering step to trap carbon particles between powder grains that subsequently form the thermal barrier coating. Also, Alperine states trapping a carbon monoxide/carbon dioxide in the micropores of the crystalline network structure, which is the same as entrapping the carbon-containing gas within the closed pores in an amount sufficient to thermally stabilize the microstructure of the thermal-insulating material. Furthermore, it is axiomatic that one who performs the steps of a process must necessarily produce all of its advantages and the mere recitation of a newly discovered property that is inherently possessed by the steps in the prior art does not cause a claim drawn to those steps to distinguish over the prior art.